
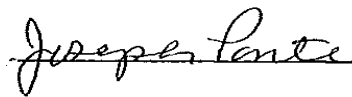


POLICY TITLE: CONFIDENTIALITY OF PRISONER INFORMATION POLICY NUMBER: 11.2 CHAPTER 11: PRISONER RECORDS		PAGE <u>1</u> OF <u>11</u>
	STATE of MAINE DEPARTMENT OF CORRECTIONS Approved by Commissioner: 	PROFESSIONAL STANDARDS: See Section VII
EFFECTIVE DATE: September 20, 2004	LATEST REVISION: August 26, 2013	CHECK ONLY IF APA []

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to 34-A M.R.S.A. Sections 1403 and 1216.

II. APPLICABILITY

All Departmental Adult Facilities

III. POLICY

It is the policy of the Maine Department of Corrections that all prisoner records be maintained in a confidential manner and that all prisoner information be kept confidential, as required by legal mandates and Departmental policies and procedures in order to prevent unauthorized access to information that is protected. This policy and procedures shall be reviewed on an annual basis and updated as necessary.

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VI. PROCEDURES

PROCEDURE A: General Rules

1. Prior to disclosure of a record or the information in a record, designated staff shall determine whether the record is a Departmental record or third party record. A Departmental record is a record that is generated by Department of Corrections staff or by persons or agencies providing services to prisoner(s) by agreement with or under contract to the Department. A record generated by any other person or agency is a third party record. In addition, a record generated upon court order, no matter who generates it (e.g. pre-sentence investigation), is considered a third party record.
2. Unless otherwise governed by this policy and procedures, third party records and information contained in those records shall be kept confidential with the exception that third party records or information contained in those records shall be disclosed to staff of the Department and persons or agencies providing services to prisoner(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections.

Requests for disclosure made by other persons or agencies, including the prisoner, shall be referred to the party that generated the record (or to the court if it was generated upon the order of a court). However, third party records generated by the Maine state agency providing mental health services may be discussed with the prisoner but only by Department of Corrections mental health staff. Also, third party school records may be discussed with the prisoner. Copies of these mental health or school records may not be provided by the Department of Corrections to the prisoner or any other person or agency. Finally, if the prisoner or guardian has already obtained a record from the party that generated it, the third party record may be discussed with that person.

3. Unless otherwise governed by this policy and procedures, Departmental records and information contained in those records and information about a prisoner obtained through observation or report shall be kept confidential with the exception that Departmental records or information shall be disclosed:

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- a. to staff of the Department and persons or agencies providing services to prisoner(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections;
- b. to the prisoner, if he or she requests such disclosure;
- c. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections form signed by the prisoner (Attachment A), if the prisoner is an adult without a guardian;
- d. to a parent or guardian of the prisoner, if the prisoner is a minor or is an adult with a guardian and if the parent or guardian requests such disclosure;
- e. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections form signed by the prisoner and signed by that prisoner's parent or guardian (Attachment A), if the prisoner is a minor;
- f. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections form signed by the prisoner and signed by the guardian (Attachment A), if the prisoner is an adult with a guardian;
- g. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
- h. to a Maine State agency if, but only if, such disclosure is necessary to carry out a statutory function of that agency;
- i. to any criminal justice agency (at the federal, state or local level or at any level of the Canadian government) if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;
- j. to any person or agency authorized to receive such disclosure pursuant to the determination of a hearing officer in an unemployment compensation proceeding relating to a state employee, in a state agency personnel action, or in a professional or occupational board licensure, certification, or registration proceeding, if approved by the Department's legal representative in the Attorney General's office;

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- k. to persons engaged in research, if approved by the Commissioner, or designee, and if identifying data is not disclosed by the researchers;
 - l. to victims as provided in this policy and procedures and other Departmental policies and procedures; and
 - m. to the Governor's office, a legislative committee, or a legislative study commission, if approved by the Commissioner, or designee. Information shall not be disclosed to an individual legislator without an Authorization for Disclosure of Information by the Department of Corrections form.
4. Information pertaining to a victim or to other prisoners including, but not limited to co-defendants, shall not be disclosed to anyone other than a Departmental employee and shall be redacted from a record prior to its disclosure to anyone other than a Departmental employee, unless it is necessary that the information be included (e.g., in a pre-sentence investigation report to the court.)

If there is any concern regarding a request to disclose records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

PROCEDURE B: Special Rules

1. If a prisoner is being released to supervision by the Department in the community, a summary of the prisoner's health care information may be disclosed to Adult Community Corrections staff authorized to receive such disclosure by an Authorization for Disclosure of Discharge Planning Information by the Department of Corrections form (see Attachment H) signed by the prisoner and signed by the guardian if the prisoner is an adult with a guardian, for the purpose of facilitating case planning and supervision in the community.
2. The following types of records and information may be disclosed only to Department of Corrections employees if, but only if, such disclosure is necessary to carry out a statutory function of the Department. Such records or information may not be disclosed to or discussed with the prisoner. They may not be disclosed to or discussed with anyone other than a Departmental employee, not even persons or agencies providing services to prisoner(s) by agreement with or under contract to the Department, another state agency, criminal justice agency, or a court, except that a victim's request for notice of release may be discussed with the office of the prosecuting attorney which processed the request.
 - a. information obtained for the purpose of evaluating a prisoner's ability to participate in a community based program, such as community sentiment information;

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- b. information obtained from informants in connection with the possible or actual violation of facility rules; and
 - c. a victim's request for notice of release.
- 3. The results (whether positive or negative) of an HIV test may be disclosed only:
 - a. to Department of Corrections staff, provided that the recipient is authorized to receive those results by the Commissioner of Corrections; (Attachment B)
 - b. to the prisoner tested;
 - c. to a person or agency authorized to receive those results by an Authorization for Disclosure of Information Acquired by Virtue of HIV Testing (AIDS Testing) by the Department of Corrections form signed by the prisoner tested (even if the prisoner is an adult with a guardian or a minor); (Attachment C)
 - d. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena); and
 - e. to the Bureau of Health.
- 4. The disclosure of information acquired during the provision of substance abuse treatment services by substance abuse treatment staff must be accompanied by the legally required notice. (Attachment D)

Information acquired during the provision of substance abuse treatment services by substance abuse treatment staff may be disclosed only:

- a. to the person who received the substance abuse treatment services;
- b. to any person or agency authorized to receive such disclosure by an Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form signed by the prisoner (Attachment E), if the prisoner is an adult without a guardian;
- c. to a parent or guardian of the prisoner, if the prisoner is a minor and if the parent or guardian requests such disclosure and the prisoner has consented to the disclosure by signing an Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form;

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- d. to any person or agency authorized to receive such disclosure by a Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form signed by the prisoner, if the prisoner is a minor;
 - e. to the guardian of the prisoner, if the prisoner is an adult with a guardian and if the guardian requests such disclosure;
 - f. to any person or agency authorized to receive such disclosure by a Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form signed by the guardian, if the prisoner is an adult with a guardian;
 - g. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
 - h. to the Department of Health and Human Services if, but only if, the information disclosed consists solely of a report of suspected child abuse or neglect;
 - i. to medical personnel if, but only if, the information disclosed is needed by those personnel so that they can treat a condition which poses an immediate threat to health and which requires immediate medical intervention;
 - j. to a criminal justice agency if, but only if, the information disclosed consists of information about a crime committed or threatened to be committed during the course of substance abuse treatment or against substance abuse treatment staff; and
 - k. to persons engaged in auditing or program evaluation, if approved by the Commissioner, or designee, and if identifying data is not disclosed by the auditors or evaluators.
5. The following types of records and information shall be disclosed to any person or agency requesting it:
- a. all current and prior adult offense(s) of which the prisoner has been convicted;
 - b. the sentence(s) received (including any probation conditions);
 - c. the date of the prisoner's release from institutional confinement or Supervised Community Confinement;

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- d. name and aliases;
 - e. birth date;
 - f. physical description of the prisoner (e.g., sex, race, height, weight, build, eye color, hair color, scars, marks, tattoos, glasses, facial hair);
 - g. photo or fingerprints taken at the direction of a criminal justice agency;
 - h. the facility at which a prisoner is housed or other location of the prisoner, unless the Commissioner determines that it would be detrimental to the welfare of a prisoner to disclose the information;
 - i. the prisoner's current address if on Supervised Community Confinement;
 - j. address and dates of completed or scheduled furloughs; and
 - k. if the prisoner has been released to probation, the current address, unless the Commissioner determines that it would be detrimental to the welfare of a probationer to disclose the information.
6. In addition to information required to be provided to a victim who has a victim's request for notification of release, the following information shall be disclosed to any victim requesting it:
- a. Whether a prisoner has been charged with committing any crime while incarcerated and, if so, the crime with which the prisoner has been charged; and
 - b. Whether the prisoner has been disciplined while incarcerated, and, if so, the offense for which the disciplinary action was taken and the type of disciplinary action taken.
7. In relation to a fugitive (a person who has unlawfully left Departmental custody or supervision), the following information may be disclosed to any person or agency, to the general public, or to the press:
- a. the information specified in Procedure B. 4.;
 - b. the fact that the person is a fugitive; and
 - c. the place and time the person unlawfully left Departmental custody or supervision;

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In addition, there may be disclosed to a criminal justice agency any information about the fugitive which may be disclosed to such an agency under the other provisions of this policy.

8. The following information may be disclosed to United States Immigration and Customs Enforcement in relation to a prisoner who is an alien:
 - a. the information specified in Procedure B. 4.;
 - b. the fact that the person is an alien;
 - c. the date(s) of the alien's commitment to the Department of Corrections;
 - d. the relevant court(s) and docket number(s);
 - e. the projected date of earliest release; and
 - f. the country of the alien's citizenship.
9. In relation to a prisoner who is seeking employment eligibility verification, applying for identification or applying for MaineCare or Social Security benefits, the following information may be disclosed, using Attachments F and F1, to U.S. Immigration and Customs Enforcement, Maine Secretary of State's Office (Division of Motor Vehicles), the prisoner's employer, the Maine Department of Health and Human Services and Social Security Administration:
 - a. name and aliases
 - b. date and place of birth
 - c. parents names
 - d. social security number (and other social security numbers used)
 - e. citizenship status
 - f. physical description
 - g. photo and signature
10. The following information may be disclosed to any state or federal agency in relation to a prisoner for the purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency:
 - a. Name;

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- b. Date of birth;
 - c. Social security number;
 - d. Eligibility number for a federally funded service;
 - e. Dates on which a federally funded service was received; and
 - f. Other information required for and to be used solely for audit or research purposes for those services provided by or through the Department.
11. Screening and assessment tools, including, but not limited to, substance abuse screening and assessment instruments, education and vocational assessments and tests, classification grid sheets, and health care screening and assessment instruments, may be disclosed only to:
- a. Departmental staff or persons or agencies providing services to prisoner(s) by agreement with or under contract to the Department;
 - b. a Maine state agency if, but only if, such disclosure is necessary to carry out a statutory function of that agency; and
 - c. a legislative committee or study commission with authority to examine issues related to mental health.
12. Intelligence and investigative records are considered operational records and not prisoner records. Intelligence and investigative information is generated in an effort to anticipate, prevent, or monitor possible criminal activity or in the course of investigation of known or suspected crimes, civil violations, and law suits. This includes, but is not limited to information concerning possible criminal activity, informant information, security plans and practices, critical incident plans and practices, investigative techniques and practices, and any information which would endanger safety if disclosed. Intelligence and investigative information may be disclosed only:
- a. to staff of the Department and persons or agencies providing services to prisoner(s) by agreement with the Department or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections;
 - b. to a criminal justice agency if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;

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- c. to the Department of Health and Human Services for use in the investigation of suspected child abuse or neglect;
- d. to any person authorized to receive such disclosure by a court order after consultation with the Department's legal representative in the Attorney General's office;
- e. to a prisoner accused of a crime if, but only if, the prisoner is authorized to receive such information by a court or the prosecuting attorney in charge of the matter after consultation with the Department's legal representative in the Attorney General's office; and
- f. to a victim if, but only if, the victim is authorized to receive such information by a court order or the prosecuting attorney in charge of the matter after consultation with the Department's legal representative in the Attorney General's Office.

If there is any concern regarding a request to disclose records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

Procedure C: Acknowledgement of Confidentiality of Prisoner Information

- 1. All facility staff, whether employees or persons working at the facility under contract to or by agreement with the Department, shall be provided a copy of this policy.
- 2. Each member of the staff shall sign a statement acknowledging that he or she has received and read the policy (Attachment G). The signature shall be witnessed.
- 3. The statement shall be filed in the staff member's personnel or other appropriate file.
- 4. If a staff member has any concern about this policy or the law relating to confidentiality of prisoner information, it is the staff member's responsibility to use the appropriate channels to have the concern referred to the Department's legal representative in the Attorney General's office.

VII. PROFESSIONAL STANDARDS

ACA:

ACI - 4-4099 The institution uses a "release of information consent form" that complies with applicable federal and state regulations. Unless the release of information is required by statute, the inmate signs the consent form prior to the release of information and a copy of the form is maintained in the inmate's case record.

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ACI - 4-4396 (MANDATORY) The principle of confidentiality applies to offender health records and information about offender health status.

- The active health record is maintained separately from the confinement case record.
- Access to the health record is in accordance with state and federal law.
- To protect and preserve the integrity of the facility, the health authority shares with the superintendent/warden information regarding an offender's medical management.
- The circumstances are specified when correctional staff should be advised of an offender's health status. Only that information necessary to preserve the health and safety of an offender, other offenders, volunteers/visitors, or the correctional staff is provided.
- Policy determines how information is provided to correctional/ classification staff/volunteers/visitors to address the medical needs of the offender as it relates to housing, program placement, security, and transport.
- The release of health information complies with the Health Insurance Portability and Accountability Act (HIPAA), where applicable, in a correctional setting.

4-ACRS-7D-08 Procedures govern case record management, including, at a minimum, the following areas: the establishment, maintenance, use, and content of case records; right to privacy; secure placement and preservation of records; and schedule for retiring or destroying inactive records.

- All entries in the case record are signed and dated.
- Appropriate safeguards exist to minimize the possibility of theft, loss, or destruction of records.
- Records are safeguarded from unauthorized and improper disclosure.
- When any part of the information system is computerized, security ensures confidentiality.
- The facility uses a "release of information consent form" that complies with the applicable federal and state regulations and a copy of the form is maintained in the offender's case record.
- Employees, consultants, and contract personnel are informed in writing about the facility's policies on confidentiality of information and agree in writing to abide by them.
- The policies and procedures are reviewed annually.

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